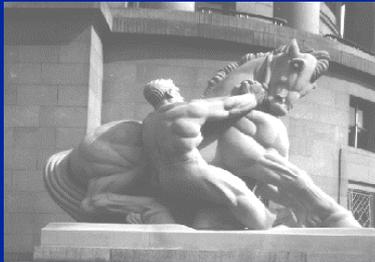


VIEWING LASIK EYE SURGERY ADS – THE FTC EXPERIENCE



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*The views expressed by Mr. Kelly are his
and do not represent those of the Commission or
any individual Commissioner.*



Advertising 101

- ✓ Advertising helps the marketplace
- ✓ It can inform buyers about new products and services, encourage competition on product attributes and price, and educate consumers regarding quality
- ✓ It can help consumers make informed decisions based on the benefits and risks of a service or product
- ✓ It can enhance competition and assist product innovation
- ✓ But it must be truthful and non-misleading



Consumer Protection is Our Mission

Federal Trade Commission Act prohibits:

- Unfair or deceptive acts or practices in any medium (15 U.S.C. 45(a))
- False advertisements for foods, drugs, devices, and services (15 U.S.C. 52)



Core Advertising Principles

- **Tell the truth:** don't mislead consumers about the benefits or safety of device/service by what is said expressly or by what ad implies
- **Tell all the truth:** don't omit information that is needed to keep what is said from being deceptive
- **Make sure it is the truth:** do have adequate support for any objective claim (express or implied) before the ad is run



Substantiation Standard

- Standard is flexible
 - depends on claim: how presented, how qualified
 - ensures consumer access to information about emerging science/service
 - ensures that information is accurate
- But rigorous: “Competent and Reliable Scientific Evidence”
 - consult with experts in all relevant fields

Ad Meaning

- ❑ Advertisers are responsible for express and reasonably implied claims
- ❑ Net impression of ad is important
 - *text, product name, visual images*
- ❑ Qualifying information should be disclosed where needed to prevent deception
- ❑ Disclosures need to be clear and conspicuous (*4 Ps - placement, proximity, prominence, presentation*)



Consumer Testimonials

- Cannot say in a testimonial what cannot be said in an ad
- Testimonials often contain claims regarding efficacy
- Such claims must be supported by scientific evidence

Lasik Advertising – Focusing on Key Claims

- “Throw away”/”Eliminate the need for” glasses or contacts
- Safety Claims
- Comparative Claims



Enforcement approach is multi-faceted





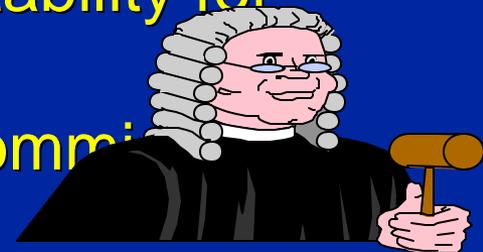
- Work closely with government, licensing, and professional groups - FDA, State Medical Boards, AAO, ASCRS
- Encourage industry self-regulation
- Educate consumers
- Bring cases where necessary

Business and Consumer Guidance

- ❖ www.aaopt.org/aaopt/member/policy/advertising_refractive.cfm (**AAO Guidelines for Refractive Surgery Advertising** - for marketers)
- ❖ www.ftc.gov/bcp/online/pubs/health/lasik.htm (“**Basic Lasik: Tips on Lasik Eye Surgery**” - for consumers)
- ❖ www.fda.gov/cdrh/LASIK/risks.htm (“**Lasik Eye Surgery: What are the risks and how can I find the right doctor for me?** “ – for consumers)

Recent Commission Cases

- Two settlements with national advertisers accepted for comment in March
- Focus on deceptive claims:
 - “*eliminate glasses and contacts for life,*”
 - “*eliminate need for reading glasses,*”
 - “*eliminate risk of glare and haloming,*”
 - “*significantly less risk than contacts or glasses*”
- Also challenge false claim of “*free consultation*” to determine suitability for procedure
- Awaiting final action by the Commi





Key Points

- ❑ Truthful and non-misleading advertising assists consumers in the marketplace
- ❑ But deceptive advertising distorts consumer choice
- ❑ Reasonable industry self-policing, informative consumer education, and targeted government action work together to protect consumers and encourage fair competition



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